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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,832	01/11/2001	Joseph A. Horton	MCRVT-023C	8538

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EXAMINER

THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 06/23/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/758,832

Applicant(s)  
Horton et al.

Examiner  
Michael Thaler

Art Unit  
3731



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jun 9, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 131-146 is/are pending in the application.
- 4a) Of the above, claim(s) 135 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 131-134 and 136-146 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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*advance*

Claim 135 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 23.

The disclosure is objected to because of the following informalities: The "ball 76" and "claw 78", described on page 33 line 9 of the specification are not seen in figure 11, nor it is clear how they function. Appropriate correction is required.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the apparatus for cutting defined in claim 136 which is an apparatus to delivering an electrical discharge defined in claim 137 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claims 131-134 and 136-146 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 131, line 11 and claim 138, lines 9-10, there is no antecedent basis for "the third catheter".

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Claim 139 has the same problem. Claims 132-137 depend from canceled claims.

Claims 131-134 and 136-138 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Guglielmi et al. (5,122,136). Guglielmi et al. show delivery catheter (the microcatheter described in col. 5, lines 61-62 or the microcatheter 44), intravascular member (e.g. 28) having a collapsed configuration (within the microcatheter) and an expanded configuration (figure 1A), advancer apparatus 10 connected to the intravascular member 28 by a releasable connection 22 which is volitionally severable (col. 6, lines 60-65). As to the phrase "for implantation...within the lumen of a blood vessel" in claim 131, line 1, the aneurysm 64 is actually an enlarged or ballooned part of the blood vessel lumen. Alternatively, it would have been obvious that the aneurysm 64 is an enlarged or ballooned part of the blood vessel lumen since blood flows within it. As to claim 138, lines 19-21, a blood flow channel is defined through intravascular member 28 while it is within the aneurysm 64 until it is completely occluded since some blood flows into the aneurysm for some time immediately after the intravascular member is inserted therein.

Claims 131-134 and 136-138 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balko et al. (4,512,338) in view of Guglielmi et al. (5,122,136). Balko et al., in figure 7, show

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delivery catheter 36 and intravascular member 34 but fail to disclose an advancer apparatus and a releasable connection. However, Guglielmi et al. teaches that an intravascular member 28 may be deployed within a blood vessel by using an advancer apparatus 10 and a releasable connection 22 between the intravascular member and the advancer apparatus. This arrangement has the self-evident advantage of enabling easy and reliable deployment of the intravascular member. It would have been obvious to include these features in the Balko et al. system so that it too would have this advantage.

Claims 139-143 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balko et al. (4,512,338) in view of Guglielmi et al. (5,122,136) as applied to claims 131-134 and 136-138 above, and further in view of Massoud et al. ("Endovascular Treatment of Fusiform Aneurysms with Stents and Coils: Technical Feasibility in a Swine Model"). As to claim 139, Balko et al. fail to disclose a plurality of catheters. However, Massoud et al., in the paragraph labeled "Aneurysm Treatment" on page 1955, teach that a first catheter (the angiographic sheath), a second catheter (the guiding catheter) and a third catheter (the microcatheter) should be used to deploy a implantable device (the platinum coils) within a blood vessel. This arrangement has the apparent advantage of guiding the implantable device through narrow and tortuous blood vessels. Using first, second and third catheters to deploy the Balko et al.

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intravascular member in order to obtain this advantage would have been obvious. As to claims 140-146, Balko et al. fail to disclose retaining an embolus member within a vessel wall defect by the intravascular member. However, Massoud et al. teach that an embolus member may be so retained (the paragraph under the heading "Purpose" on page 1953 and the paragraph under the heading "Aneurysm Treatment" on page 1955) apparently in order to occlude the vessel wall defect (aneurysm). It would have been obvious to insert an embolus member within the vessel wall defect and retain it by the intravascular member in the Balko et al. procedure so that the vessel wall defect described by Balko et al. would be occluded as well. As to claim 143, Massoud et al. teach advancing the embolus delivery catheter through the intravascular member into the vessel wall defect, as indicated by the phrase "through the mesh of the stent into the aneurysm" near the middle of the paragraph under the heading "Aneurysm Treatment" on page 1955.

Applicant's arguments with respect to claims 131-134 and 136-146 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht  
June 13, 2003



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731